

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

December 10, 2013 at 10:00 a.m.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

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1.	08-21502-D-13	MATTHEW/TRESA DEMERS	MOTION TO MODIFY PLAN
	HWW-2		10-28-13 [64]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

2.	08-21502-D-13	MATTHEW/TRESA DEMERS	CONTINUED MOTION TO DISMISS
	RDG-1		CASE FOR UNREASONABLE DELAY
			THAT IS PREJUDICIAL TO
			CREDITORS, MOTION TO DISMISS
			CASE FOR FAILURE TO MAKE PLAN
			PAYMENTS AND/OR MOTION TO
			DISMISS CASE
			10-11-13 [60]

3. 11-30814-D-13 JAMES/KELLY GILL  
JCK-6

MOTION TO MODIFY PLAN  
10-31-13 [78]

4. 13-31814-D-13 KEVIN KENNEDY  
13-2314  
KENNEDY V. GREER ET AL

MOTION TO DISMISS ADVERSARY  
PROCEEDING  
11-1-13 [7]

**Final ruling:**

This is the motion of AMS Servicing, LLC, and the Bank of New York Mellon Trust Company to dismiss this adversary proceeding pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 7012(b). There has been no timely opposition filed to the motion. However, for the following reasons, the court is not prepared to rule on the motion at this time. First, the moving parties served the plaintiff's attorney, but not the plaintiff himself. Pursuant to Fed. R. Bankr. P. 9014(b) ("Rule 9014(b)"), incorporating Fed. R. Bankr. P. 7004, a motion and all related papers must be served on the responding party himself or herself. Although Rule 9014(b) does not expressly apply to motions filed in adversary proceedings, in this case, the court will require service on the plaintiff himself, pursuant to Fed. R. Bankr. P. 7004. Here, service was made on the plaintiff's attorney pursuant to Fed. R. Civ. 5(b)(1), which requires service on a party's attorney; however, the same rule also provides that the court may order service on the party. In this case, because the moving parties are seeking dismissal of the adversary proceeding itself, the court will require service on the plaintiff himself.

Second, the proof of service of the moving papers is not signed under oath, as required by 28 U.S.C. § 1746.

The court will continue the hearing to January 7, 2014, at 10:00 a.m., the moving parties to file a notice of continued hearing no later than December 10, 2013, and to serve the notice of continued hearing, together with the motion and all other moving papers, on the plaintiff no later than December 24, 2013. The moving parties shall also serve the notice of continued hearing on the plaintiff's attorney no later than December 24, 2013. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(1) or (f)(2), at the moving parties' election, depending on whether the notice is served at least 14 days or at least 28 days prior to the continued hearing date. The moving parties shall file a proof of service no later than December 27, 2013. In addition, the moving parties shall file a corrected proof of service signed under oath evidencing service of the moving papers originally.

The hearing will be continued by minute order. No appearance is necessary.

5. 12-22520-D-13 ROXANA NAJERA  
CJY-5

MOTION TO MODIFY PLAN  
9-24-13 [77]

6. 13-27621-D-13 CLAUDIA JOB  
MLA-4

CONTINUED MOTION TO VALUE  
COLLATERAL OF TEDROWE REALTY  
AND INVESTMENTS  
9-12-13 [63]

**Final ruling:**

**The hearing on this motion is continued to January 7, 2014 at 10:00 a.m. No appearance is necessary on December 10, 2013.**

7. 13-27621-D-13 CLAUDIA JOB  
MLA-5

CONTINUED MOTION TO VALUE  
COLLATERAL OF TEDROWE REALTY  
AND INVESTMENTS  
9-12-13 [69]

**Final ruling:**

**The hearing on this motion is continued to January 7, 2014 at 10:00 a.m. No appearance is necessary on December 10, 2013.**

8. 13-29922-D-13 NORMAN/PANDORA BURTON  
PGM-1

MOTION TO CONFIRM PLAN  
10-16-13 [22]

9. 13-31224-D-13 ALVARO MONCADA/CARMEN MOTION TO CONFIRM PLAN  
JDP-3 MORAGA 10-29-13 [32]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

10. 08-31125-D-13 RONALD/JEAN BREWER MOTION TO VALUE COLLATERAL OF  
JDP-1 U.S. BANK, N.A.  
10-29-13 [92]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of U.S. Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of U.S. Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

11. 13-31326-D-13 HENRY DIAZ CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
10-21-13 [15]

12. 09-32830-D-13 GEORGE/VICTORIA HANSEN MOTION TO VALUE COLLATERAL OF  
JDP-1 CHASE BANK USA, N.A.  
10-23-13 [64]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Chase Bank USA, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Chase Bank USA, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

13. 13-21234-D-13 JOHN/CYNTHIA GIFFORD  
PGM-3

MOTION TO CONFIRM PLAN  
10-22-13 [85]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

14. 12-39438-D-13 FARON/CORINNE MOYERS  
PGM-5

MOTION TO CONFIRM PLAN  
10-22-13 [126]

**Tentative ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee has filed opposition, and the debtors have filed a reply. For the following reasons, the motion will be denied.

This case was filed on November , 2012, over a year ago. The trustee filed a seven-point objection to the debtors' original plan, of which the debtors satisfactorily addressed one in their first amended plan, leaving the trustee to raise the other six again in opposition to that plan. The debtors then filed two different amended plans, which have been characterized by the debtors failing to include proposed step-ups in the plan payment as their 401(k) loans were paid off; dramatically understating both debtors' employment income; failing to accurately disclose the value of their interest in Foothill Ventures, Inc.; failing to provide requested documents to the trustee; making trivial increases in the proposed plan payment while retaining for themselves large amounts of previously undisclosed income; and repeatedly failing to address issues raised by the trustee in opposition to prior plans. The court repeatedly found that the debtors had not met their burden of demonstrating that their plan was proposed in good faith, and has also found they had not met their burden of demonstrating that their plan met the disposable income test and the liquidation test. The court has also found that the debtors had failed to comply with their duty of careful, complete, and accurate reporting in their schedules.

With their present plan, the debtors have continued this pattern, resulting in the trustee raising five objections, including, significantly, that they continue to understate Mr. Moyers' income. In two earlier rulings, the court observed that the debtors had failed to explain why he expected his income to be so much lower in 2013 than in 2012. The debtors have, again, failed to address this question. The trustee indicates that Mr. Moyers' pay stub for the period ending June 28, 2013 shows year-to-date earnings of \$74,758, an average of \$12,459 per month, whereas the debtors' most recent amended Schedule I, filed April 27, 2013, shows only \$5,902. In other words, the debtors have failed to report income averaging \$6,557 per month, and they do not propose to ever pay that unreported income to their creditors. In addition, they have proposed to make, as the court indicated earlier, trivial

increases in the plan payment - first by \$900 per month, then \$160, and now \$100, thus proposing to retain for themselves over \$5,000 per month in income that should be going to their creditors.

The debtors' only response on this issue, up to the time they filed their reply to the trustee's opposition to this motion, was to state that Mr. Moyers' commission income varies and is unpredictable; they then concluded: "we are paying all of our disposable income to our creditors to the best of our ability." Debtors' Decl., filed Oct. 22, 2013, at 5:2-3. Based on the evidence of Mr. Moyer's June 28 pay stub, that statement was inaccurate, a point the debtors now appear to concede in their reply filed just 42 days after they made that statement under oath. In their reply, the debtors "acknowledge that a 100% plan is required and [they] acknowledge this fact in pursuit of confirmation." Debtors' Sur-Reply, filed Dec. 3, 2013 ("Reply"), at 1:24-25. In other words, only after the trustee objected to and the court denied confirmation of three different proposed plans, and only after the debtors, less than two months ago, proposed the plan that is the subject of this motion - a 31% plan, which they claimed represented "all of [their] disposable income," and only after the trustee objected yet again to their proposed plan do the debtors finally acknowledge they need to increase the dividend to 100%. As with the debtors' conduct throughout this case, the court finds that the plan proposing to pay 31% - the present plan, was not filed in good faith.

The debtors have finally acknowledged to the court - again, only after the trustee unearthed the true facts, the bonus income Mr. Moyers has received in 2013, which they itemize as totaling \$47,758. They "acknowledge that such commissions and bonuses should properly be integrated into their disposable income analysis." Reply, at 3:25-27. They acknowledge that Mr. Moyers' actual bonus income has been \$5,319 per month more than was being offered through their proposed plan. And they appear to acknowledge, although not explicitly, that the unreported income should be paid to their creditors through the plan:

At a rate of approximately \$5,000 per month for the last ten months (\$50,000) and the projected 12 months increase of \$5,000 per month (\$60,000) and 36 months remaining[,] another \$230,000 would be coming into the plan[,] for a total paid in of \$339,430 of \$353,000, or nearly 100%.

Reply, at 4:8-12. First, however, there have been 11 months' worth of plan payments that have come due since this case was filed, not ten. Second, the court cannot determine where the \$230,000 figure comes from or the \$339,430. Third, the unreported income, by the debtors' own admission, has averaged \$5,319 per month, not \$5,000. Fourth, the debtors' proposed solution to this problem is to simply pay into the plan any future commissions Mr. Moyers receives (if any), with no accounting for the \$58,509 in unreported income they have retained for themselves post-filing (\$5,319 x 11 month). This is not acceptable.

In short, were there any doubt before, the court is now convinced that the debtors' present plan, even if increased to a 100% dividend, has not been proposed in good faith, and for that reason, as well as the others also raised by the trustee, the motion will be denied.

The court will hear the matter.

15. 12-26341-D-13 MARIA GUEL  
JCK-1

MOTION TO MODIFY PLAN  
10-25-13 [25]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

16. 12-26444-D-13 MARY JUIP  
HWW-3

OBJECTION TO CLAIM OF CAVALRY  
PORTFOLIO SERVICES, LLC, CLAIM  
NUMBER 3  
10-26-13 [69]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtor's objection to claim. No appearance is necessary.

17. 12-26444-D-13 MARY JUIP  
HWW-4

OBJECTION TO CLAIM OF JEFFERSON  
CAPITAL SYSTEMS, LLC, CLAIM  
NUMBER 4  
10-26-13 [73]

**Final ruling:**

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the objection has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtor's objection to claim. No appearance is necessary.

18. 13-29144-D-13 FRANCISCO ITURBIDE  
PGM-2

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
11-6-13 [34]

19. 12-35945-D-13 CLAUDE/KELEEN BRYANT MOTION TO APPROVE LOAN  
CMB-77 MODIFICATION  
11-1-13 [165]

**CASE DISMISSED 11/26/13**

20. 12-41448-D-13 GABRIEL PINTO MOTION TO MODIFY PLAN  
PLC-1 11-4-13 [31]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

21. 10-27049-D-13 ENRIQUETA VIZCARRA MOTION TO MODIFY PLAN  
DN-2 10-24-13 [63]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

22. 09-23551-D-13 RONALD/LAURIE MICHAELSEN MOTION TO VALUE COLLATERAL OF  
JDP-1 U.S. BANK, N.A.  
10-21-13 [68]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of U.S. Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of U.S. Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.



23. 11-41652-D-13 JOHN KILLIAN AND INEZ MOTION TO VALUE COLLATERAL OF  
JDP-1 PERKINS-KILLIAN U.S. BANK, N.A.  
11-5-13 [40]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of U.S. Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of U.S. Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

24. 13-33652-D-13 KATHERINE BEAUREGARD MOTION FOR RELIEF FROM  
ADR-1 AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
11-9-13 [19]

MARK LOVECCHIO VS.

**Final ruling:**

This case was dismissed on November 26, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

25. 13-23458-D-13 RONALD/JACQUELINE YUTUC MOTION TO MODIFY PLAN  
GJS-4 10-31-13 [57]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

26. 13-27258-D-13 TALANNA WILLIAMS MOTION TO VALUE COLLATERAL OF  
DVD-5 OCWEN LOAN SERVICING, LLC  
11-8-13 [71]

**Final ruling:**

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of OCWEN Loan Servicing, LLC at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of OCWEN Loan Servicing, LLC's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

27. 13-27258-D-13 TALANNA WILLIAMS  
DVD-6

MOTION TO VALUE COLLATERAL OF  
OCWEN LOAN SERVICING, LLC  
11-8-13 [75]

**Final ruling:**

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of OCWEN Loan Servicing, LLC at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of OCWEN Loan Servicing, LLC's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

28. 13-26459-D-13 MICHAEL CARLETON  
PGM-3

MOTION TO CONFIRM PLAN  
10-25-13 [89]

29. 13-30959-D-13 STEVEN/DIANE GALLEGOS  
ACW-2

MOTION TO CONFIRM PLAN  
10-14-13 [31]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

30. 13-30960-D-13 MANUEL/LILIA ANDRADE  
DN-3

MOTION TO CONFIRM PLAN  
10-30-13 [32]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The trustee and creditor Real Time Resolutions have filed oppositions to the motion. Feasibility of the plan depends on the court valuing the collateral securing the claim of Real Time Resolutions at \$0, whereas the court has not issued an order valuing that collateral, as required for the plan to be confirmed. See LBR 3015-1(j). Hearing on this motion will be continued to January 7, 2014, at 10:00 a.m., to be heard with the debtors' motion to value the collateral of Real Time Resolutions.

The hearing will be continued by minute order. No appearance is necessary on December 10, 2013.

31. 13-32165-D-13 QUANG NGUYEN  
DAT-1

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
10-31-13 [16]

**Final ruling:**

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

32. 13-32165-D-13 QUANG NGUYEN  
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-1-13 [25]

**Final ruling:**

This is the trustee's objection to the debtor's claim of exemptions. The trustee objected on the basis that the debtor had failed to file a spousal waiver for use of the Cal. Code Civ. Proc. § 703.140(b)(5) exemptions. On November 25, 2013, the debtor filed a spousal waiver in the appropriate form that was signed by both the debtor and his spouse. As a result, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

33. 13-29266-D-13 GERARDO MANZO/BEATRIZ  
TOG-2 CEJA

AMENDED MOTION TO CONFIRM PLAN  
10-17-13 [42]

34. 13-30768-D-13 SAMUEL/KAREN ARANDA  
TBK-3

MOTION TO AVOID LIEN OF CAPITAL  
ONE BANK, USA, N.A.  
10-29-13 [25]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

35. 13-30768-D-13 SAMUEL/KAREN ARANDA MOTION TO AVOID LIEN OF MIDLAND  
TBK-4 FUNDING, LLC  
10-29-13 [29]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

36. 13-30768-D-13 SAMUEL/KAREN ARANDA MOTION TO AVOID LIEN OF LAW  
TBK-5 OFFICES OF KENOSIAN AND MIELE  
FOR WESTERN STATES ADJUSTERS,  
LLC (UNDERLYING CREDITOR  
PROVIDIAN NATIONAL BANK)  
10-29-13 [33]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

37. 09-28669-D-13 SANDRA GRAF MOTION TO MODIFY PLAN  
CJY-1 10-28-13 [54]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

38. 09-28669-D-13 SANDRA GRAF MOTION TO VALUE COLLATERAL OF  
JDP-1 BANK OF STOCKTON  
10-23-13 [50]

**Final ruling:**

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Bank of Stockton at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of Stockton's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

39. 12-20069-D-13 RONALD/KIMBERLY MOTION TO MODIFY PLAN  
FF-5 TANKERSLEY 10-30-13 [75]

40. 10-47270-D-13 CHARLES/MICHELLE MOTION TO VALUE COLLATERAL OF  
JDP-1 BEARDSLEY BANK OF AMERICA, N.A.  
10-24-13 [46]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

41. 12-40971-D-13 SHANNON KOEPPLIN AND MOTION TO MODIFY PLAN  
RAC-1 MARNI FITZER 10-30-13 [31]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

42. 13-29273-D-13 ERNESTO/MARIA ORTEGA MOTION TO CONFIRM PLAN  
TOG-2 10-23-13 [48]

43. 13-31773-D-13 CHRISTIAN BADER  
RDG-1

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
11-1-13 [39]

**Final ruling:**

This is the trustee's objection to the debtor's claim of exemptions. The trustee objected on the basis that the debtor had failed to file a spousal waiver for use of the Cal. Code Civ. Proc. § 703.140(b)(5) exemptions. On November 18, 2013, the debtor filed a spousal waiver in the appropriate form that was signed by both the debtor and his spouse. As a result, the trustee's objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

44. 13-31773-D-13 CHRISTIAN BADER  
RLC-2

MOTION TO CONFIRM PLAN  
10-21-13 [21]

**Final ruling:**

This is the debtor's motion to confirm a chapter 13 plan. The motion will be denied for the following reasons. First, the moving party served the plan, the motion, the notice of hearing, and the supporting declaration on the chapter 13 trustee, the United States Trustee, and the party requesting special notice in this case; however, the moving party served only the notice of hearing and none of the other documents on other creditors. Thus, the motion does not comply with LBR 3015-1(d)(1). Second, the moving party failed to serve the Franchise Tax Board, listed on his Schedule E, and four creditors listed on his Schedule F at all; thus, the motion does not comply with Fed. R. Bankr. P. 2002(b). Third, the moving party filed an amended notice of hearing, changing both the date and location of the hearing, the same day the original notice and motion were filed; however, there is no evidence of service of the amended notice of hearing. As a result of these service and notice defects, the motion will be denied, and the court need not reach the issues raised by the trustee or the IRS at this time.

The motion will be denied by minute order. No appearance is necessary.

45. 13-31773-D-13 CHRISTIAN BADER  
RLC-3

MOTION TO VALUE COLLATERAL OF  
INTERNAL REVENUE SERVICE  
10-21-13 [26]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

46. 13-29976-D-13 RAMON BARRAGAN  
TOG-2

MOTION TO CONFIRM PLAN  
10-16-13 [31]

**Final ruling:**

**This case was dismissed on November 26, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.**

47. 10-31878-D-13 GARY/ELENA GARRETT  
DN-5

MOTION TO MODIFY PLAN  
10-30-13 [70]

48. 13-30379-D-13 DANIELLE MARTIN  
APN-1

CONTINUED AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY WELLS  
FARGO BANK, N.A.  
9-12-13 [24]

49. 13-30284-D-13 SONYA FARNSWORTH  
SJS-1

MOTION TO CONFIRM PLAN  
10-29-13 [27]

**Final ruling:**

**The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.**

50. 10-51090-D-13 MIGUEL/MARISOL OROZCO  
RDG-4

OBJECTION TO DEBTORS' CLAIM OF  
EXEMPTIONS  
11-1-13 [105]

**Final ruling:**

This is the trustee's objection to the debtors' amended claim of exemption filed October 7, 2013. On November 6, 2013, the debtors filed a further amended claim of exemption. As a result of the filing of the further amended claim of exemption, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

51. 10-51090-D-13 MIGUEL/MARISOL OROZCO  
11-2430 RLG-79  
OROZCO ET AL V. CHASE HOME  
FINANCE LLC

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH JPMORGAN CHASE  
BANK, N.A.  
11-6-13 [79]

**Final ruling:**

This is the motion of the plaintiffs in this adversary proceeding, who are also the debtors in the chapter 13 case in which this adversary proceeding is pending (the "debtors"), for approval of a settlement agreement between the debtors and JPMorgan Chase Bank, N.A. ("Chase"), which agreement was signed by the debtors on November 5, 2013. That agreement is the second signed by the debtors, the first having been signed by them on May 22, 2013. For ease of reference, the agreement signed May 22, 2013 will be referred to as the "first agreement"; the agreement signed November 5, 2013 will be referred to as the "second agreement." As explained below, the motion will be denied as moot because the court has already approved a compromise between the debtors and Chase.

On June 10, 2013, the debtors filed a motion for approval of the first agreement. In a tentative ruling issued for the July 16, 2013 hearing on that motion, the court expressed its concern that the compromise was conditioned on the debtors' exemption of a portion of the settlement proceeds being "approved." The court noted that the trustee had filed an objection to the debtors' claim of exemption, which was set for hearing on August 6, 2013. The court concluded that the compromise would not be approved at the expense of the trustee's right to object to the claim of exemption. The court also expressed concern about the provision in the first agreement that the compromise was conditioned on confirmation of a fourth modified chapter 13 plan in the debtors' case, if the debtors found it necessary.

At the July 16, 2013 hearing, the debtors' counsel agreed that those conditions would be removed from the compromise, and Chase, also represented at the hearing, expressed no opposition to that proposal. Thus, the court's minutes for the July 16, 2013 hearing reflect that the compromise was approved as stated on the record; the debtors' attorney and the chapter 13 trustee's attorney were to sign off on the order. However, the debtors' counsel did not submit a proposed order. Instead, on October 8, 2013, she filed a Statement in Support of Proposed Settlement ("Statement"), supported by a declaration of debtor Marisol Orozco, in which the debtors continued to argue the merits of the compromise as including the condition that their claim of exemption of a portion of the proceeds be approved. As the Statement did not reflect the court's ruling at the July 16, 2013 hearing, and as the motion to approve the first agreement was no longer pending, the court took no action in response to the Statement.



At a status conference held November 7, 2013 in the adversary proceeding, the debtors' counsel continued to argue that the compromise should be approved with the condition that the debtors' claim of exemption would be approved. The court explained again that the compromise would not be approved with that condition, and indicated that an order approving the compromise, on the terms stated on the record at the July 16, 2013 hearing, would issue from chambers. Thus, on November 12, 2013, the court issued an order approving the compromise, in which the court struck from the settlement agreement (the first agreement) the two conditions the court had disapproved on July 16, 2013. The court added a requirement that any settlement payment or check from Chase be payable to both the debtors, in care of the Law Office of Robert Goldstein Client Trust Account, and the Chapter 13 Trustee. The November 12, 2013 order resolves the matter of the settlement between the debtors and Chase, and the present motion - to approve the second agreement - is moot.

The court notes that in the second agreement, the parties have removed the two conditions the court had earlier disapproved; however, the debtors' counsel took the liberty of adding this statement to the agreement: "Furthermore, in the Lawsuit [the adversary proceeding], the Orozcos' basis for a claim for damages is lost future earnings purportedly arising from lost income as a result of the alleged wrongful foreclosure." Debtors' Motion, filed Nov. 6, 2013, Ex. 1, ¶ 2.10. And in the present motion, the debtors claim the settlement funds would "serve to compensate [them] for lost future earnings" (*id.* at 2:18-19). That contention and the new sentence added in the second agreement were clearly intended to support the debtors' position in opposition to the trustee's objection to their claim of exemption; for this reason, even if the compromise had not already been approved, the court would not approve the second agreement.

For the reasons stated, the motion will be denied as moot by minute order. No appearance is necessary.

52.	11-48394-D-13	MANUEL/KAREN MUNGUIA	MOTION TO MODIFY PLAN
	DN-2		10-30-13 [35]

53.	13-20199-D-13	MICHAEL/MARY ROMAN	MOTION TO CONFIRM PLAN
	PGM-4		10-23-13 [112]

54. 13-32605-D-13 ROSE RAMIREZ  
RDG-2

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
11-15-13 [23]

**Final ruling:**

**This case was dismissed on November 26, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

55. 13-32605-D-13 ROSE RAMIREZ  
MDE-1

OBJECTION TO CONFIRMATION OF  
PLAN BY LSF8 MASTER  
PARTICIPATION TRUST  
11-18-13 [26]

**Final ruling:**

**This case was dismissed on November 26, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

56. 13-32907-D-13 MINDY LOPEZ  
RDG-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
11-22-13 [15]

57. 09-23128-D-13 RAY/MARY SMITH  
ADR-5

MOTION TO APPROVE LOAN  
MODIFICATION  
11-21-13 [77]

58.	13-21234-D-13	JOHN/CYNTHIA GIFFORD PGM-3	CONTINUED MOTION TO SUBSTITUTE PARTY 10-22-13 [91]
59.	13-33038-D-13	ALBERT/RITA DE GUZMAN RDG-1	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-22-13 [34]
60.	13-32541-D-13	CALVIN LEE RDG-1	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-15-13 [25]
61.	13-32841-D-13	CHARLES EVINS RDG-1	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-19-13 [37]

62. 13-32841-D-13 CHARLES EVINS  
PPR-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
11-20-13 [40]
63. 13-32841-D-13 CHARLES EVINS  
RWF-1  
CONTINUED MOTION TO VALUE  
COLLATERAL OF BDM MORTGAGE  
SERVICES, INC.  
10-29-13 [15]
64. 13-32841-D-13 CHARLES EVINS  
RWF-4  
CONTINUED MOTION TO VALUE  
COLLATERAL OF BDM MORTGAGE  
SERVICES, INC.  
10-29-13 [27]
65. 13-32841-D-13 CHARLES EVINS  
CC-1  
OBJECTION TO CONFIRMATION OF  
PLAN BY NTC & CO., ET AL.  
11-20-13 [43]

66. 12-35945-D-13 CLAUDE/KELEEN BRYANT MOTION TO VACATE  
KRW-2 11-26-13 [187]

**CASE DISMISSED 11/26/13**

67. 13-33345-D-13 JOSEPH HOLDENER MOTION FOR RELIEF FROM  
CCR-1 AUTOMATIC STAY  
SAFEWAY, INC. VS. 11-26-13 [26]

68. 13-33057-D-13 CESAR PEREYRA/BRENDA OBJECTION TO CONFIRMATION OF  
RDG-1 MARTINEZ PLAN BY RUSSELL D. GREER  
11-22-13 [24]

69. 08-37361-D-13 RAYMOND/ROSE GREEN CONTINUED MOTION TO VALUE  
JDP-1 COLLATERAL OF 123 LOAN, LLC  
10-15-13 [117]

70. 13-30768-D-13 SAMUEL/KAREN ARANDA CONTINUED MOTION TO CONFIRM  
TBK-2 PLAN  
10-10-13 [21]
71. 13-29273-D-13 ERNESTO/MARIA ORTEGA OBJECTION TO CONFIRMATION OF  
RMD-2 PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
11-18-13 [61]
72. 13-32979-D-13 JOSE HERNANDEZ OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
11-22-13 [23]
73. 13-32382-D-13 LEWYN BOLER OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
11-15-13 [20]

**Final ruling:**

**This case was dismissed on November 26, 2013. As a result the objection will be overruled by minute order as moot. No appearance is necessary.**

74.	13-32385-D-13	ERIC PENEYRA RDG-1	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-15-13 [17]
75.	13-32489-D-13	DENNIS GALLAGHER/JANE RDG-1 DUTRA GALLAGHER	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-15-13 [17]
76.	13-32489-D-13	DENNIS GALLAGHER/JANE EAT-1 DUTRA GALLAGHER	OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC 11-20-13 [21]
77.	13-32889-D-13	ABRAHAM/SILVIA FARIAS RDG-1	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-15-13 [16]

78. 13-33090-D-13 DANIEL ORTIZ/KIMBERLY  
RDG-1 SILVA-HANSON  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
11-22-13 [20]
79. 13-21792-D-13 TERRY/JACQUELINE THOMAS  
CJY-3 MOTION TO INCUR DEBT  
11-25-13 [49]
80. 13-32499-D-13 TERRI WRIGHT-MCDANIEL  
RDG-1 OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
11-15-13 [17]
81. 12-21570-D-13 DENIS XENOS  
GMW-1 MOTION TO APPROVE LOAN  
MODIFICATION O.S.T.  
11-27-13 [32]